



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matters of Y.N., Principal
Engineer Structural Evaluation
(PS3745T) and Principal Engineer,
Traffic (PS3746T), Department of
Transportation

List Removal Appeals

CSC Docket Nos. 2018-946 and
2018-1042

ISSUED: APRIL 6, 2018

Y.N.¹ appeals the removal of his name from the eligible lists for Principal Engineer Structural Evaluation (PS3745T) and Principal Engineer, Traffic (PS3746T), Department of Transportation (Transportation), on the basis of an unsatisfactory employment record. These appeals have been consolidated due to common issues presented.

The appellant, a non-veteran, took and passed the promotional examinations for Principal Engineer Structural Evaluation (PS3745T) and Principal Engineer, Traffic (PS3746T), both of which had a closing date of October 21, 2016. The resulting eligible lists promulgated on May 25, 2017 and expire on May 24, 2020. The appellant's name was certified to Transportation from both lists on May 25, 2017. In disposing of the certifications, Transportation requested the removal of the appellant's name on the basis of an unsatisfactory employment record. Specifically, Transportation asserted, among other things, that the appellant received a final rating of "Unsatisfactory" on his Performance Assessment Review (PAR) for the April 1, 2016 to March 31, 2017 rating period, during which the appellant was serving provisionally in the title of Principal Engineer Structural Evaluation.² It is noted that the names of three eligibles remain active on the eligible list for Principal Engineer Structural Evaluation (PS3745T).

¹ In the interest of confidentiality, initials have been used in this decision as the appellant also filed a discrimination appeal. *See In the Matters of Y.N., et al.* (CSC, decided April 4, 2018).

² The appellant received a provisional appointment to the title of Principal Engineer Structural Evaluation, effective October 31, 2015, and was returned to his permanent title of Senior Engineer Structural Evaluation, effective July 22, 2017.

On appeal to the Civil Service Commission (Commission), the appellant argues that the removal of his name from the subject eligible lists is unwarranted given his accomplishments while serving provisionally in the title of Principal Engineer Structural Evaluation and other factors.

In response, Transportation states that the appellant received a PAR rating of “Unsatisfactory” at both the interim and final stages for the April 1, 2016 to March 31, 2017 rating period, when he was serving provisionally in the title of Principal Engineer Structural Evaluation. It argues that the appellant’s unsatisfactory performance continued thereafter until his provisional appointment was discontinued on July 22, 2017. Specifically, Transportation states that the appellant repeatedly turned in consultant inspection reports that were incomplete and inaccurate. The reports were returned to the appellant to no avail, forcing management to assign the reports to other lower-level engineering staff. The appellant also did not properly document a field investigation, and it had to be reassigned to be rewritten, delaying the final report three and a half months. Transportation explains that consultant inspection reports contain the contracted consultant’s record of the condition of the State’s bridges and recommendations for remedial action. Failure to timely and thoroughly review the reports could result in the State’s non-compliance with federal standards and risk to the public. In addition, Transportation states that both of the appellant’s subordinates requested reassignment due to the appellant’s poor instruction, communication and guidance. He also took another team’s subordinate into the field without pre-approval, and that subordinate reported that the appellant’s actions in the field were unsafe. Further, Transportation states that the appellant demonstrated a consistent difficulty or refusal to accept his superiors’ directions, which was documented in his PAR. For example, it was necessary to direct him to perform the simplest of tasks such as completing his timesheet, reporting his attendance to his supervisor, completing assigned tasks and scheduling the work of the group. At times, his actions rose to the level of insubordination, which resulted in the issuance of several Preliminary Notices of Disciplinary Action (PNDAs). Specifically, the appellant received PNDAs for an official written reprimand on April 28, 2017; a five-day suspension on June 15, 2017; a 10-day suspension on July 7, 2017; a 20-day suspension on July 12, 2017; and a 45-day suspension on August 16, 2017.³ Transportation indicates that the appellant’s appeals of the PNDAs are pending. Transportation maintains that the appellant did not perform at the level of the title of Principal Engineer Structural Evaluation and that despite repeated attempts by management to institute remedial action, the appellant did not make the needed improvements. In support, Transportation submits various documents, including the appellant’s PAR and PNDAs.

³ Agency records also reveal a December 20, 2017 PNDA, immediately suspending him on charges with the proposed penalty of removal.

In reply, the appellant contends that he was only given restricted access in order to review consultant inspection reports, and he could not complete calculations as he had to use a “read-only” option. In addition, he argues that as he was serving as a Principal Engineer, he should only have been assigned the second-level review of consultant inspection reports according to bureau policy; however, this policy was “violated” during many projects wherein he was assigned the first-level review of consultant inspection reports. The appellant requests that he be reappointed as a Principal Engineer Structural Evaluation. In support, the appellant submits the previously noted bureau policy, among other documents.

In reply, Transportation states, regarding the appellant’s claim of restricted access, that the reporting system has two parts: full access and read-only access. Full access is granted on a very limited basis only to those engineers who are authorized, based on the project, to make changes to the report or to confirm changes made by the consultant within the system. Transportation states that consistent with his assignments, the appellant was granted read-only access and provided hard copies of each report, which would suffice to conduct a full review of the consultant reports with calculation verification performed by the program itself. Since the appellant’s assignments were solely the review of consultant reports, it was expected that any comments or corrections needed would be made directly to the hard copy and submitted to the consultant thereafter for review or response. With respect to the bureau policy identified by the appellant, Transportation points out that the policy stipulates that work assignments should be flexible enough to maintain a reasonable balance in the workload distribution. It states that although some of the appellant’s work was assigned in the interest of equal distribution and may have included first-level review, he also received second-level review assignments. Regardless, Transportation maintains that the appellant was expected to perform first-level review assignments, and he was either incapable or unwilling to do so.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)7, allows for the removal of an individual from an eligible list who has a prior employment history which relates adversely to the position sought. *N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Commission to remove an eligible’s name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate’s background and recognizing the nature of the position at issue, a person should not be eligible for appointment. *N.J.A.C.* 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority’s decision to remove his or her name from an eligible list was in error.

A review of the record indicates that the appointing authority's request to remove the appellant's name from the subject eligible lists based on his employment record was justified. In this regard, the appellant received a rating of "Unsatisfactory" at both the interim and final stages for the April 1, 2016 to March 31, 2017 PAR rating period during which time he was serving provisionally in the title of Principal Engineer Structural Evaluation, one of the subject titles. The appellant's unsatisfactory performance continued with his repeated failure to turn in complete and accurate consultant inspection reports, which record the condition of the State's bridges and recommend remedial actions. Transportation advises that the State may become non-compliant with federal standards and the public may be placed at risk if these reports are not thoroughly reviewed. Further, the appellant was issued several PNDAs in 2017 that were related to his unsatisfactory performance. Most of the PNDAs propose major discipline, up to and including the penalty of removal. Accordingly, the totality of the appellant's unsatisfactory employment record provides a sufficient basis to remove his name from the subject eligible lists.

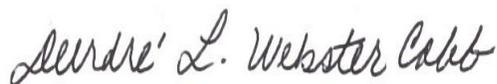
In addition, the appellant cannot be provisionally reappointed to the title of Principal Engineer Structural Evaluation as the Principal Engineer Structural Evaluation (PS3745T) eligible list is complete. *See N.J.A.C. 4A:4-1.5(a)1.* As such, the Commission declines to grant any relief in this regard.⁴

ORDER

Therefore, it is ordered that these appeals be denied.

This is the final administrative determination in these matters. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 4TH DAY OF APRIL, 2018



Deirdre L. Webster Cobb
Acting Chairperson
Civil Service Commission

⁴ It is noted that Transportation's Division of Civil Rights and Affirmative Action has indicated that the appellant's return to his permanent title is being investigated for any violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace. *See In the Matters of Y.N., et al.* (CSC, decided April 4, 2018).

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

c. Y.N.
Michele A. Shapiro
Kelly Glenn
Records Center